

D. H. ...
Proct.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8900

FILE: B-193239

DATE: January 19, 1979

DU 00682

MATTER OF: Intermountain Sanitation Service

[Allegation That Contractor Was NOT Furnished a Copy of the Invitation]

DIGEST:

Inadvertent failure of contracting activity to send incumbent contractor invitation for new fiscal year procurement is not compelling reason to question award when there is no evidence of conscious or deliberate effort by activity to preclude contractor from competing and competition resulted in award at reasonable price.

Intermountain Sanitation Service protests the award of a contract for item No. 2 to Burney Garbage Disposal by Region 5 of the Forest Service under invitation for bids No. R5-06-78-41 on the basis that the contracting activity did not furnish it a copy of the invitation and thus did not allow it to compete for the procurement.

The invitation was issued on August 29, 1978. Copies of it were sent to two Forest Service Districts, to the Regional Office, and to two post offices for posting. Apparently, also, the procurement was advertised by newspaper. Nine potential bidders (including Intermountain) were sent copies of the invitation package. The copy sent to Intermountain was mailed to the address for that firm that was on the bidders list, and therein arose the failure of the protester to receive it. The address on the bidders list was that of the former owner of Intermountain. Even though the protester had acquired the company a year or so ago, was the party performing the 1977-1978 contract for the services in question, and was receiving payment at its present address, the address for Intermountain that was on the bidders list had inadvertently not been changed. The protester only learned of the procurement when the former owner of Intermountain informed it on September 19 (the bid opening date) of the fact that he had received the invitation. The protester contacted the contracting officer regarding the matter, but by that time bids had already been opened.

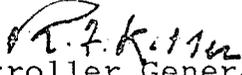
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Three bidders submitted bids. Two of these bid only on work item No. 1. Burney, the third bidder, bid on work item No. 2 only. Award on item No. 2 was made to Burney by the contracting officer--after having been contacted by the protester on September 19--after he had determined that it would be prejudicial not to make the award after the disclosure of the Burney bid price at bid opening and that the Burney price of \$3,320.59 was reasonable since the price of the protester's expiring contract had been \$3,924.65.

Inadvertent actions of an activity which preclude a potential bidder (even an incumbent contractor) from competing on a procurement do not constitute a compelling reason to resolicit if adequate competition and reasonable prices were obtained and there was no deliberate or conscious attempt to preclude the potential bidder from competing. Valley Construction Company, B-185684, April 19, 1976, 76-1 CPD 266. While in this case only one bid was received on the protested award item, not all bidders are required to compete in order to achieve adequate competition. C.G.C.I., B-184690, March 2, 1976, 76-1 CPD 147. Here, the contracting officer determined the award price in view of the price of the Intermountain contract to be reasonable. Intermountain does not contend that the price is unreasonable. Further, Intermountain does not contend that there was a deliberate or conscious effort made to exclude it from the bidding for this procurement.

While it is regrettable that Intermountain was not solicited for this work, the protest must be denied.


Deputy Comptroller General
of the United States